

Decision 01-11-011 November 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas
Procurement Ratemaking Practices of San Diego
Gas and Electric Company.

Investigation 00-08-003
(Filed August 3, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards Latino Issues Forum (LIF) \$11,505.00 for contributions to Decision (D.) 01-05-003. This decision compensates LIF for all 46.5 hours spent participating in this proceeding. However, following our normal policy, we use compensation rates previously adopted by the Commission and reduce the compensation rate for the 4.5 hours associated with the preparation of the fee request to 50% of the professional rate awarded.

1. Background

This proceeding established a border price methodology for pricing gas procured for core and non-core customers. In addition, it adopted a method for rebating past over-collections from core customers and permitted San Diego Gas and Electric (SDG&E) to recover under-collections from non-core customers.

LIF advocated the "border price methodology" as the most appropriate method for the Commission to redress the misallocation of gas transport costs that resulted from SDG&E's pricing procedures. In addition LIF advocated the adjustment of rates commencing from the Office of Ratepayer Advocate's (ORA) first protest of SDG&E's advice letter for the pricing of gas in February 2000. Concerning these issues, D.01-05-003 adopted the positions LIF advocated.

LIF filed a request for intervenor compensation on July 2, 2001. LIF seeks \$12,787.50 in attorney's fees covering 46.5 hours of professional work.

2. Standards for an Award of Intervenor Compensation

The critical issue before the Commission is whether LIF's participation in this proceeding meets the criteria that the Commission uses to award intervenor compensation. We therefore begin a brief review of the legal standards used to determine eligibility for compensation.

For present purposes, intervenors are customers, or representatives of customers, who seek compensation for their contributions in Commission proceedings. Such an intervenor must file a request for compensation pursuant to Public Utilities Code §§ 1801-1812. (All statutory citations are to the Public Utilities Code. The relevant statutory provisions use "customer" and "intervenor" interchangeably, as will we in today's decision.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision

has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. LIF's NOI and Request for Compensation

On September 26, 2000, LIF timely filed a NOI to claim compensation. On November 16, 2000, Administrative Law Judge (ALJ) Bushey found LIF eligible to seek compensation, but noted that LIF had deferred its showing of significant financial hardship until its request for compensation.

LIF filed its request for compensation within 60 days after the issuance of D.01-05-003; therefore, the request is timely filed. In its request, LIF states that it faces significant hardship within the meaning of § 1804(b) and (c). LIF bases its significant financial hardship on its non-profit status, as well as its inability to otherwise compensate its advocates for time in excess of forty hours. LIF notes that it has been found to meet the hardship test defined in § 1802(g) in two recent fee awards (D.00-04-005 and D.00-04-011), and that nothing has changed in LIF's circumstances since those findings were made.

We find on the basis of this showing that LIF meets the significant hardship test, and is thus eligible to receive intervenor compensation.

4. LIF's Contribution to Resolution of Issues

Pursuant to § 1802 (h), a party may make a substantial contribution to a decision in whole or in part in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

As mentioned above, the LIF filings supported the adoption of the "border pricing methodology" for pricing gas to SDG&E's core and non-core customers, and LIF alone argued that core customers should receive other than prospective relief from the date of decision. LIF notes that on these key issues, the Commission fully adopted LIF's positions.

LIF notes that it participated fully throughout the entire proceeding. LIF filed a PHC statement and appeared at the September 26, 2000 PHC. Also, on October 12, 2000, LIF propounded detailed data requests seeking inter alia on a month-by-month basis between February 2000 and October 1, 2000 the differential between what core customers would pay under alternative pricing methodologies. LIF participated in briefing, as well as opening and reply comments on the Draft Decision of ALJ Sullivan.

No party opposes LIF's request for compensation.

LIF has contributed substantially to D.01-05-003 in several ways. First, although ORA and SDG&E prepared and filed a stipulated set of facts, LIF alone engaged in discovery that elucidated the billing impacts of alternative pricing

methodologies. This discovery assisted the Commission in selecting the methodology for calculating border prices. Second, LIF alone argued that customers should receive other than prospective relief from the date of the decision. The adopted decision endorses LIF's argument and allocates surcredits to core customers.

In summary, on these critical issues, the Commission adopted LIF's positions fully. Moreover, on each of these points, LIF's contributions were substantial and unique. There was no duplication of effort, since no other party argued for redress for SDG&E's past overbilling of core customers, and no other party engaged in the discovery that made possible the estimation of billing impacts of the alternative pricing methodologies. D.01-05-003 repeatedly notes LIF's contributions.¹ Thus, under § 1804 (a), LIF's "presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contention, legal contentions, or specific policy or procedural recommendations presented by the customer."

5. LIF's Productivity

Section 1801.3(f) states that the intervenor compensation program "shall be administered in a manner that avoids unproductive or unnecessary participation . . ." The Commission in D.98-04-059 has interpreted this statutory provision to require that "Compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation." That decision (at pp. 32-33) directs to demonstrate productivity by assigning a

¹ See D.01-05-003 at pp. 5, 8, 9, 10, 1, 15, 17, 19, 20, 21, 22, & 23.

reasonable dollar value to the benefits of their participation to ratepayers. At a minimum, when the benefits are intangible, the customer should present information sufficient to justify a Commission finding that the overall benefits of a customer's participation will exceed a customer's costs. This showing assists us in determining the reasonableness of the request and in avoiding unproductive participation.

As discussed above, LIF's contribution was unique, and has thus avoided any duplication of effort. Moreover, the moderate number of hours expended by LIF shows its participation was efficient as well as effective.

Finally, LIF's positions resulted in \$1.7 million more in rebates to core customers than the positions supported by ORA and SDG&E. Consequently, the expected value of the resulting policy change to core gas ratepayers exceeded the requested compensation. Thus, LIF's participation was productive.

6. Requested Compensation

LIF requests compensation of \$12,787.50 as follows:

Professional Time

General (5.833333 hrs @ \$275/hr)	\$ 1,604.17
Methodology (17.3333 @ \$275/hr)	\$ 4,766.67
Timing of Rate Change (18.33 @ \$275/hr)	\$ 5,179.16
Request for Compensation (4.5 @ \$275/hr)	\$ 1,237.50
Total Request	\$12,787.50

6.1 Hours Claimed

LIF documented the claimed hours by presenting a daily breakdown of Attorney Susan Brown's hours with a brief description of each activity. The hourly breakdown reasonably supports the claim.

We find that LIF's claimed hours are reasonable. We note, however, that LIF requests compensation for 4.5 hours of professional work related to the preparation of this request for compensation, and that LIF seeks compensation for these hours at Brown's full professional rate. Requesting compensation for these hours at Brown's full professional rate is inconsistent with Commission practice, which is to compensate these hours at half the professional rate. We will make this adjustment in calculating the award.

6.2 Hourly Rates

LIF requests an hourly rate for Brown of \$275, basing its request on materials filed in other requests for compensation. Based on these materials, the Commission has recently adopted a rate of \$260 for Brown's work in 2000.² In this current proceeding, Brown worked 27.5 hours in 2000 and 19 hours in 2001. We will use the adopted 2000 figure in calculating our compensation award for professional hours in both 2000 and 2001.

6.3 Other Costs

LIF does not request compensation for any other costs.

7. Adjusted Award

In summary, LIF's request for compensation for 42 hours of professional work is reasonable. We compensate LIF for these 42 hours at the rate of \$260 an hour. In addition, compensation for the 4.5 hours at half the adopted professional rate is reasonable for the time spent in preparing the filing requesting intervenor compensation. Thus, \$11,505.00 is reasonable compensation for LIF for its contributions to D.01-05-003.

² D.01-09-045.

SDG&E shall pay the award of compensation, as required by § 1807. Consistent with previous Commission decisions, we order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing September 15, 2001 (the 75th day after LIF filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put LIF on notice that the Commission Staff may audit its records related to this award. Thus, LIF must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. LIF's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

This is a compensation decision per § 1801 (Rule 77.7(f)(6)). Accordingly, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. LIF has made a timely request for compensation for its contributions to D.01-05-003.
2. LIF meets the significant hardship test for intervenor compensation.
3. LIF contributed substantially to the resolution of the two central issues in this proceeding, namely, which pricing methodology for gas best complies with Commission decisions and whether to apply the new pricing methodology only on a prospective basis.
4. LIF's request for compensation of 42 hours of professional work for its contributions is reasonable and productive.

5. LIF's request for compensation of 4.5 hours of professional for preparation of the intervenor compensation filing is reasonable.

6. Compensating LIF at half the professional rate for preparation of the intervenor compensation filing is reasonable and consistent with prior Commission decisions.

7. It is reasonable to award LIF \$11,505.00 in intervenor compensation.

Conclusions of Law

1. LIF has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. LIF has made a substantial contribution to the resolution of the issues of which pricing methodology for gas best complies with Commission decisions and whether to apply the new pricing methodology only on a prospective basis.

3. LIF should be awarded \$11,505.00 in intervenor compensation for its contribution to D.01-05-003.

4. This order should be effective today so that LIF may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Latino Issues Forum (LIF) is awarded \$11,505.00 in compensation for its substantial contribution to Decision 01-05-003.

2. Within 30 days of the effective date of this order, San Diego Gas and Electric Company (SDG&E) shall pay LIF \$11,505.00. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning September 15, 2001 and continuing until full payment is made.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.